

**THE COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS & ENERGY**

Petition of Richmond Connections, Inc.)	
d/b/a Richmond Networx Requesting that the)	
Massachusetts Department of)	
Telecommunications and Energy Institute a)	D.T.E. 03-45
Proceeding to Investigate the Establishment)	
of a Universal Service Fund for the)	
Commonwealth of Massachusetts)	

REPLY COMMENTS OF T-MOBILE USA, INC.

T-Mobile USA, Inc. (“T-Mobile”)¹ hereby submits the following Reply Comments in response to the Hearing Office Notice dated May 29, 2003 by the Department of Telecommunications and Energy (“Department” or “DTE”) and the comments filed by a number of parties on June 20, 2003 in this proceeding. T-Mobile appreciates the opportunity to share its views with the Department on why establishment of a Commonwealth Universal Service Fund (“CUSF”) would be contrary to sound public policy as well as to law.

The Notice seeks comments on a petition filed by Richmond Connections d/b/a Richmond Networx (“Richmond Networx”) on March 5, 2003, requesting that the Department commence a proceeding to investigate the establishment of a CUSF. Richmond Networx argues in its petition that, “in order to advance statewide access to

¹ T-Mobile USA, Inc. (formerly known as VoiceStream Wireless Corporation), combined with Powertel, Inc., is the sixth largest national wireless provider in the U.S. with licenses covering over 94 percent of the U.S. population and currently serving over ten million customers. T-Mobile and Powertel are wholly-owned subsidiaries of Deutsche Telekom, AG and are part of its T-Mobile wireless division. Both T-Mobile and Powertel are, however, operated together and are referred to in this request as “T-Mobile.” Via its HotSpot service, T-Mobile also provides Wi-Fi (802.11b) wireless broadband Internet access in more than 2,000 convenient public locations such as Starbucks coffeehouses, airports, and airline clubs, making it the largest carrier-owned Wi-Fi network in the world.

affordable telecommunications in a competitive environment, the DTE should prescribe a program of support for the provision of basic and advanced telecommunications service that enables rates and services in high- and low-cost locations to be reasonably comparable.”² The Department, however, will not find – either in Richmond Networkx’s Petition or in its initial comments in this proceeding – one shred of evidence justifying the need for the Department to establish a CUSF by showing that any area of Massachusetts lacks access to affordable telecommunications services. Indeed, T-Mobile agrees with Verizon Wireless that what Richmond Networks seeks is a “subsidy in order to compete more effectively with Verizon Communications.”³ Richmond Networkx nowhere explains how it would use subsidies from a CUSF to advance the goal of ensuring that “quality services are available at just, reasonable and affordable rates throughout the Commonwealth,”⁴ as opposed to enhancing its ability reduce its costs (which may or may not be inflated) so as to compete with Verizon.

Further, T-Mobile is one of a number of operators competing in the intensely competitive commercial mobile radio services (“CMRS”) sector. Such vibrant competition in the wireless sector is providing substantial benefits to Massachusetts residents in the form of lower prices, better features, and more service offerings. Far from advancing the goal of making quality telecommunications services available at affordable rates in Massachusetts, Richmond Networkx’s petition to establish a CUSF, if applied to wireless operators,⁵ would work a significant hardship on wireless subscribers

² Richmond Networkx Petition at 2.

³ Comments of Verizon Wireless at 2.

⁴ Richmond Networkx Petition at 2.

⁵ As discussed more fully, *infra*, T-Mobile believes that the Department lacks the statutory authority to establish a CUSF, but if the Department establishes the CUSF, it should not assess such a fund on CMRS operators.

throughout the Commonwealth by increasing the rates they pay for services, only to provide a subsidy to Richmond Networkx. T-Mobile agrees with the comments of Paetech Communications in this proceeding that “state regulators are better served by enhancing pro-competitive market conditions rather than relying on historically flawed subsidy programs.”⁶

Not only has Richmond Networkx not offered a compelling policy rationale for establishing a CUSF, it also has not offered a convincing argument as to how the Department overcomes its acknowledged lack of explicit statutory authority to create a CUSF. As Verizon Massachusetts convincingly explains, Section 254 of the Telecommunications Act of 1996 – contrary to the claims of AT&T Communications of New England⁷ and Richmond Telephone Company⁸ – is not an independent source of authority for the states to establish a state universal service fund, but rather establishes certain requirements that states must follow should states choose to establish such funds. The states of Alaska, Maine, Michigan, Missouri, Minnesota, Montana, New Mexico, Oklahoma, Oregon, South Carolina, Texas and Utah have all taken the step of promulgating specific statutory provisions to govern the establishment of state universal service funds.⁹ T-Mobile respectfully urges that the best path for the Commonwealth would be for it to follow a similar course, should it believe that a CUSF is needed.

Finally, T-Mobile agrees with Verizon Wireless and Verizon New England that under applicable federal and state law, the Department lacks authority to regulate rates,

⁶ Comments of Paetech Communications, Inc. at 3.

⁷ Comments of AT&T Corporation of New England, Inc. at 3-4.

⁸ Comments of Richmond Telephone Company at 1-2.

⁹ Comments of Verizon Massachusetts at 3-6; see also Comments of Sprint Communications Company L.P. at 2-3.

entry, terms and conditions of CMRS carriers operating in the Commonwealth.¹⁰ In light of this precedent, if the Department decides to proceed with establishment of a CUSF, it should exempt CMRS carriers. None of the initial commenters in this proceeding offer arguments contradicting this point.

CONCLUSION

For the foregoing reasons, the Department should not commence an investigation into the establishment of a universal service fund for the Commonwealth.

Respectfully submitted,

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¹⁰ Comment of Verizon Wireless at 3-4; Comments of Verizon Massachusetts at 4, n.2.